
(1949) 01 PAT CK 0006
In the Patna High Court
Case No : A.F.A.D. No. 980 of 1946

Jagadish Chandra Deo Dhabal Deb

APPELLANT

Vs

Kanai Lal Nandi and Another

RESPONDENT

Date of Decision : 31-01-1949

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 21
Specific Relief Act, 1877 — Section 54

Citation : AIR 1951 Patna 525

Hon'ble Judges : Manohar Lall, J; Mahabir Prasad, J

Bench : Division Bench

Advocate : B.C. De and S.K. Mazumdar, for the Appellant; G.C. Mukharji and R.K. Bagchi, for the Respondent

Final Decision : Allowed

Judgement

Manohar Lall, J.—This is an appeal by the pltf. who is aggrieved by the decision of the learned Special Subordinate Judge of Chaibassa, dated 27-2-1946, by which he has dismissed the plft's. suit which was instituted for a permanent injunction restraining the deft. 1 from manufacturing bricks from the earth of the land described in Sch. A & also for recovery of RS. 61-8-0 as damages against the deft. for removing the earth in the form of bricks.

2. The facts found by the Cts., below are that the pltf. is a landlord & he let out survey plot No. 132 in village Galudih to deft. 1 as a raiyat. The deft. 1 dug out the earth from the surface of this holding & instead of allowing it to remain there, he manufactured bricks not for his own purposes but for commercial purposes ; thereby he made profit out of which the pltf. claimed RS. 42-8-0 being royalty at the rate of Rs. 20-8-0 for one lakh of the bricks sold.

3. Upon these findings, it is clear to us that in accordance with the provisions of 8. 21, Chota Nagpur Tenancy Act, as amended by Act XXV [25] of 1947, the deft. had no right whatsoever to manufacture the bricks which were not required for the domestic or agricultural purposes of the raiyat & his family.

4. Mr. G. C. Mukharji on behalf of the resps. contends that as the landlord had made no arrangement in this village to receive the earth so removed, the tenant is not obliged to keep the earth on the holding & that he can even throw it away. Assuming that this argument is correct, in the present case it has been found that the tenant did not throw away the earth but he sold it in the form of bricks to strangers. This certainly he is not entitled to do: see Purnendu Narayan Singh Vs. Narendra Nath Chakravarty and Others, ; nor is the tenant entitled to sell even the loose stones lying on the surface: see Kusum Kamini Debya Vs. Raja Jagdish Chandra Deo Dhabal Deb and Another, .

5. The pltf. therefore in our opinion, is entitled to the value of the earth which has been used in the bricks, & the finding of the trial Ct. that the damage suffered by the pltf. is RS. 42-8-0 was not" challenged in the first appeal to the appellate Ct.

6. Mr. B C. De on behalf of the applt. contends that there should also be an injunction against the deft. restraining him from selling bricks which he manufactures on the land. His submission is that this is a continuing wrong, & the deft. should be restrained from indulging in this wrong continuously for all times. We do not agree with this contention because the deft. has committed no wrong in digging the earth because the finding is that he dug the land for the purposes of improvement. If the deft. at any time is found to be misusing the land in that case a proper case for injunction besides damages may arise. How can we restrain the tenant from digging the earth & then for disposing of that earth when the pltf. has not asked the deft to deliver that earth to him or when he has not made any arrangement for delivery of that earth ? In any case we are not satisfied that this Ct. should exercise the power of restraining the deft. from digging the earth on the land if he digs it for the purposes of improving the holding.

7. The result is that the appeal is allowed, the decision of the learned Subordinate Judge is set aside & the pltf's. suit decreed for recovery of Rs. 42-8-0 which will carry interest at 6 per cent from the date of the decree of the trial Ct. Each party will bear his own costs in all the Cts. in the special circumstances of this case.

Mahabir Prasad, J.

8. I agree.